

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$5,359.00 UNITED STATES CURRENCY,

Defendant.

14-CV-6021E



STIPULATION FOR SETTLEMENT AND FORFEITURE

IT IS HEREBY STIPULATED between and among the plaintiff, by its attorney, William J. Hochul, Jr., United States Attorney for the Western District of New York, Grace M. Carducci, Assistant United States Attorney, of counsel, and claimant, Henry Merritt and his attorney, Charles A. Schiano, Jr., Esq., that this action be settled on the following terms and conditions:

1. The claimant and the plaintiff agree to resolve this action by settlement, in lieu of further litigation.

2. The parties agree that Henry Merritt is the sole claimant to the defendant currency that is the subject of a Verified Complaint for Forfeiture that was filed on or about January 14, 2014. The claimant hereby waives any further execution or service of process and publication of notice in this action.

3. By this settlement, the claimant agrees not to contest the civil forfeiture proceeding brought by the United States and agrees not to assist anyone else in contesting the civil forfeiture proceeding. Specifically, he agrees to immediately forfeit all of his right, title and interest to \$4,000.00 of the defendant currency pursuant to Title 21, United States Code, Section 881(a)(6), as this property constituted, or was derived from proceeds obtained,

directly or indirectly, as a result of a violation of the narcotics laws of the United States. The claimant further agrees to provide and execute any other documents the United States deems necessary to resolve the civil litigation and/or the transfer of the defendant currency.

4. Upon the approval of this Stipulation by the Court, the plaintiff and claimant consent that \$4,000.00 of the defendant currency shall be forfeited to the United States of America pursuant to Title 21, United States Code, Section 881(a)(6) and shall be disposed of according to law. The United States agrees to release to claimant the remaining \$1,359.00 of the defendant currency, less any debt owed to the United States, any agency of the United States, or any other debt in which the United States is authorized to collect. This currency will be returned by the United States Marshals Service to claimant, Henry Merritt, through his attorney, Charles A. Schiano, Jr., Esq. by ACH payment to The Schiano Law Office's financial institution.

5. The parties agree that this settlement resolves both the claimant's claim and petition for remission or mitigation which were filed with the Drug Enforcement Administration in the administrative forfeiture proceeding.

6. The claimant hereby agrees to release and hold harmless the United States Government and all of the United States Government's respective agencies, officers, servants, employees, contractors and the Rochester Police Department from any and all civil liability arising from their investigation into Henry Merritt, the seizure of the defendant currency on or about July 30, 2013, the related investigation, and from the filing of the Verified Complaint for Forfeiture against the defendant currency on or about January 14, 2014.

7. The claimant knowingly, intelligently and voluntarily waives his right to a jury trial in this case. The claimant knowingly and voluntarily waives all constitutional, legal and equitable defenses to the forfeiture of the above referenced currency in any proceeding,

including any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, as to this civil proceeding or any related criminal proceeding. The claimant knowingly, intelligently, and voluntarily waives any claim or defense under the Eighth Amendment to the United States Constitution, including any claims of excessiveness regarding the forfeiture of \$4,000.00 United States currency pursuant to Title 21, United States Code, Section 881(a)(6).

8. The parties further agree that neither party shall be liable for an award of costs and/or attorney fees against any other party in connection with this matter. The parties further agree that the plaintiff had probable cause to commence this action and that \$4,000.00 of the defendant currency is subject to forfeiture to the United States of America.

9. The parties to this stipulation further agree that upon approval of this Stipulation by the Court, the Court shall enter an Order in accordance with the terms and conditions of this Stipulation for Settlement.

WILLIAM J. HOCHUL, JR.
United States Attorney
Western District of New York

DATED: 05/13/2014

By: s/Grace M. Carducci
GRACE M. CARDUCCI, ESQ.
Assistant U.S. Attorney

DATED: 05/12/2014

s/Charles A. Schiano, Jr.
CHARLES A. SCHIANO, JR., ESQ.
Attorney for Henry Merritt

DATED: 05/12/2014

s/Henry Merritt
HENRY MERRITT
Claimant

SETTLEMENT APPROVED. IT IS SO ORDERED:

DATED: May 13, 2014, at Rochester, New York.

A handwritten signature in black ink, reading "David G. Larimer". The signature is fluid and cursive, with a large initial "D" and "L".

DAVID G. LARIMER
United States District Judge